

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2004-48-C – ORDER NO. 2004-390  
OCTOBER 11, 2004

IN RE: Application of Spectrotel, Inc. for a	)	ORDER GRANTING
Certificate of Public Convenience and	)	CERTIFICATE
Necessity to Provide Facilities Based Local	)	
Exchange and Resold Long Distance	)	
Telecommunications Services within the State	)	
of South Carolina and for Flexible Regulation	)	
and Alternative Regulation.	)	

This matter comes before the Public Service Commission of South Carolina (the “Commission”) by way of the Application of Spectrotel, Inc. (“Applicant”, “Spectrotel”, or the “Company”) for authority to provide Facilities Based Local Exchange Service and Resold Long Distance Service within the State of South Carolina (the “Certification Application”).

Further, the Company requests that the Commission regulate its local telecommunications services in accordance with the principles and procedures established for flexible regulation in Order No. 98-165 in Docket No. 97-467-C. In addition, the Company requests that the Commission regulate its business interexchange services offerings under the identical regulatory treatment granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C.

The Company's Application was filed pursuant to S.C. Code Ann. Section 58-9-280 (Supp. 2003), S.C. Code Ann. Section 58-9-585 (Supp. 2003) and the Rules and Regulations of the Commission.

By letter, the Commission's Executive Director instructed the Applicant to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the areas affected by the Application. The purpose of the Notice of Filing was to inform interested parties of the manner and time in which to file the appropriate pleadings for participation in the proceeding. The Company complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. A Petition to Intervene was received from the South Carolina Telephone Coalition ("SCTC") on April 23, 2004.

On May 12, 2004, counsel for SCTC filed with the Commission a Stipulation. The SCTC withdrew its opposition to the granting of a statewide Certificate of Public Convenience and Necessity to the Company provided the conditions contained in the Stipulation are met. The Stipulation is approved and attached as Order Exhibit 1.

A hearing was commenced on Wednesday, May 26, at 11:30 p.m. in the Commission's Hearing Room. The Honorable Mignon Clyburn, Chairman, presided. John J. Pringle, Jr., Esquire, represented the Company. Jocelyn Boyd, Staff Counsel, represented the Commission Staff. Mona Power, Director of Corporate Development, appeared and testified in support of the Application.

According to the record, the Company is a private corporation incorporated in the State of Delaware on February 29, 2000, as Plan B Communications, Inc. Ms. Power

testified that the Company changed its name to Spectrotel, Inc. on October 11, 2002. The Applicant has received authority from the South Carolina Secretary of State to transact business within the State of South Carolina. Spectrotel's corporate headquarters are located in Shrewsbury, New Jersey.

According to Ms. Power, Spectrotel will provide local exchange services via the unbundled network elements platform ("UNE-P") and resold interexchange telecommunications services. As to marketing its services in South Carolina, Ms. Power said the Company practices telemarketing to sell its services. She stated the Company will comply with all state or federal telecommunications statutes, rules or regulations governing the processing, verification, and implementation of customer-ordered changes.

The Company asked this Commission for approval of alternative regulation of its business services as was first approved by the Commission in Orders No. 95-1734 and 96-55, Docket No. 95-661-C, and modified by Order No. 2001-997, and flexible regulation for local exchange services first approved in Docket 97-467-C.

Ms. Power opined that Spectrotel possesses the technical, managerial, and financial resources to provide telecommunications services in the State of South Carolina. Spectrotel utilizes core dedicated telephony staff as well as other corporate resources for the deployment and management of its telephone operations. According to Ms. Power, this staff is competent in all areas of telephone management including finance, operations, engineering, network, and sales. Ms. Power said that Spectrotel has established a strong team to support its venture into the telecommunications market.

With regard to the Company's managerial ability, she stated the Company has the managerial ability and experience in the telecommunications industry that will allow it to be a successful competitive local exchange and toll provider in South Carolina. The record reveals that Jacob Cayan is the President and CEO of Spectrotel. Joe Noto is the Controller, and Terry Whiteside is the VP of Sales, Marketing and Operations. Mitch Wright is the VP of Information Technology. Ms. Power stated that she is the Director of Corporate Development. Prior to joining Spectrotel, she was the Senior Manager of Network Project Management for AT&T Canada, formerly MetroNet Communications, where she was responsible for managing the implementation of network projects. While at MetroNet, she led the network integration of AT&T, MetroNet and Netcom's voice and data networks. From 1996-1998, Ms. Power was Director of Corporate Development for TelAlert, Inc., a startup telephone manufacturing and design company.

With regard to the Company's financial ability to operate as a telecommunications carrier, Ms. Power states that Spectrotel has sufficient financial capability to provide the requested telecommunications services in South Carolina and has the financial capability to maintain these services.

With respect to the customer service to be offered by the Company, the record reveals that Spectrotel will offer comprehensive customer service on its toll-free telephone number 1 (888) 773-9772. Ms. Power said that this or a comparable number will appear on the customers' invoices, and customers may contact this number for information concerning their bills. Customer service agents will be available twenty-four

hours per day, seven days a week. Ms. Power further stated that the Company will directly bill its customers for local exchange and long distance services.

Ms. Power asserts that the Company will operate in compliance with all applicable statutes, regulations, and Commission orders. Further, Ms. Power assured the Commission that the Company's services will meet applicable service standards and that the Company will support universally available telephone service at affordable prices. Further, Ms. Power offered that approval of the Application serves the public interest by improving the overall quality and variety of services available in South Carolina by providing business and residential customers competitive rates and capable, responsive customer service. By offering customers greater variety and choice among local exchange and interexchange carriers, Ms. Power testified that Spectrotel's presence in the South Carolina market will increase competition in the telecommunications and data communications services market and motivate other companies to provide innovative services, improve the quality of their networks, and lower prices.

Ms. Power testified that Spectrotel has never had authority denied in any state where it has applied for authority nor has Spectrotel had authority revoked in any state where it has been granted authority. According to the testimony, the Company has not marketed its services in South Carolina prior to receiving certification, and the Company has not received revenues from the completion of intrastate calls in South Carolina prior to receiving certification. Ms. Power stated that the Company will abide by all the Commission's rules, regulations and Orders upon the Company receiving certification to

provide intrastate interexchange and local exchange telecommunications services in South Carolina.

Ms. Power agreed to furnish a copy of the Company's bill form, according to 26 S.C. Code Ann. Regs. 103-612.2 and 103-622.1 (1976). She further committed this Company to file the Commission's required financial reports in a timely fashion.

Ms. Power discussed the Company's request for certain waivers of Commission regulations. The Company requests that it be exempt from any rules or regulations that would require it to keep financial records in conformance with the Uniform System of Accounts ("USOA"). Additionally, the Company seeks a waiver of 26 S.C. Code Ann. Regs. 103-631 (1976 & Supp. 2003) so that it would not be required to publish local exchange directories. The Company has stated that it will contract with at least one incumbent local exchange carrier (or its directory publishing affiliate) for the inclusion of the Company's CLEC databases into the master customer database of the local exchange carrier. The Company also seeks a waiver of 26 S.C. Code Ann. Regs. 103-610 (1976 & Supp. 2003) so that the Company will be allowed to maintain its records at its corporate headquarters located outside the State of South Carolina. The Company wishes to maintain books and records at its headquarters in Shrewsbury, New Jersey.

After full consideration of the applicable law, the Company's Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

**FINDINGS OF FACT**

1. The Company is a privately held limited liability company duly organized and existing under the laws of the State of Delaware, is headquartered in the State of New Jersey, and has been authorized to do business in the State of South Carolina by the Secretary of State.

2. The Company is a provider of local exchange and interexchange telecommunications services and wishes to provide its services in South Carolina.

3. The Company has the managerial, technical, and financial resources to provide the services as described in its Application. S.C. Code Ann. Section 58-9-280 (B)(1) (Supp. 2003).

4. The Commission finds that the Company's "provision of service will not adversely impact the availability of affordable local exchange service." S.C. Code Ann. Section 58-9-280 (B)(3) (Supp. 2003).

5. The Commission finds that the Company will support universally available telephone service at affordable rates. S.C. Code Ann. Section 58-9-280 (B)(4) (Supp. 2003).

6. The Commission finds that the services to be provided by the Company will meet the service standards of the Commission. S.C. Code Ann. Section 58-9-280 (B)(2) (Supp. 2003).

7. The Commission finds that the provision of local exchange service by the Company "does not otherwise adversely impact the public interest." S.C. Code Ann. Section 58-9-280 (B)(5) (Supp. 2003).

8. Following execution of the Stipulation with the SCTC, the SCTC withdrew its opposition to the Application.

### **CONCLUSIONS OF LAW**

1. The Commission concludes that the Company possesses the managerial, technical, and financial resources to provide the competitive local exchange and interexchange telecommunications services as described in the Application.

2. The Commission concludes that the Company's "provision of service will not adversely impact the availability of affordable local exchange service."

3. The Commission concludes that the Company will participate in the support of universally available telephone service at affordable rates to the extent that the Company may be required to do so by the Commission.

4. The Commission concludes that the Company will provide services that will meet the service standards of the Commission.

5. The Commission concludes that the provision of local exchange services by the Company will not otherwise adversely impact the public interest.

6. Based on the above findings of fact, the Commission has concluded that a statewide Certificate of Public Convenience and Necessity should be granted to the Company to provide competitive local exchange services. The terms of the Stipulation between the Company and SCTC are approved, and adopted as a part of this Order. Any proposal to provide local telecommunications service to rural service areas is therefore subject to the terms of the Stipulation. In addition, the Company is granted authority to provide intrastate interLATA service and to originate and terminate toll traffic within the

same LATA, as set forth herein, through its own facilities and through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), directory assistance, travel card service or any other services authorized for resale by tariffs of carriers approved by the Commission.

7. The Commission concludes the Company's local exchange telecommunications services shall be regulated in accordance with the principles and procedures established for flexible regulation first granted to NewSouth Communications by Order No. 98-165 in Docket No. 97-467-C. Specifically, the Commission adopts for the Company's competitive intrastate local exchange services a rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels that will have been previously approved by the Commission. Further, the Company's local exchange service tariff filings are presumed valid upon filing, subject to the Commission's right within thirty (30) days to institute an investigation of the tariff filing, in which case the tariff filing would be suspended pending further Order of the Commission. Further, any such tariff filings will be subject to the same monitoring process as similarly situated competitive local exchange carriers.

8. The Commission adopts a rate design for the long distance services of the Company consistent with the principles and procedures established for alternative regulation of business service offerings set out in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C and modified by Order No. 2001-997.

Under the Commission approved modified alternative regulation, the business service offerings of the Company, including consumer card services and operator

services, are subject to a relaxed regulatory scheme identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. However, pursuant to Order No. 2001-997 (Docket No. 2000-407-C), this Commission has modified alternative regulation by the re-imposition of rate caps with regard to certain “operator-assisted calls” where a customer uses a local exchange carrier’s calling card to complete calls from locations which have not selected that local exchange carrier as the toll provider. Order No. 2001-997, dated November 8, 2001, imposed a maximum cap of \$1.75 for operator surcharges for such calls, and a maximum cap of \$0.35 related to the flat per-minute rate associated with these calls. Under this relaxed regulatory scheme, tariff filings for business services shall be presumed valid upon filing. The Commission will have seven (7) days in which to institute an investigation of any tariff filing. If the Commission institutes an investigation of a particular tariff filing within the seven days, the tariff filing will then be suspended until further Order of the Commission. Any relaxation in the future reporting requirements that may be adopted for AT&T shall apply to the Company also.

9. With regard to the residential interexchange service offerings of the Company, the Commission adopts a rate design that includes only maximum rate levels for each tariff charge. The Commission has previously adopted a rate structure incorporating maximum rate levels. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

10. With regard to residential interexchange service rates, the Company shall not adjust its residential interexchange service rates below the approved maximum levels

without notice to the Commission and to the public. The Company shall file its proposed rate changes, publish notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances that do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for residential interexchange services reflected in the tariff which would be applicable to the general body of the Company's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 2003).

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

1. A Certificate of Public Convenience and Necessity is granted to the Company to provide competitive local exchange and interexchange telecommunications services, via resale or on a facilities-based basis.

2. The terms of the Stipulation between the Company and the SCTC are approved and adopted as part of this Order. The Stipulation is attached as Order Exhibit

1. Any proposal to provide competitive local exchange telecommunications services to rural service areas is subject to the terms of the Stipulation.

3. The Company shall file, prior to offering local exchange services in South Carolina, its final local service tariff with the Commission.

4. If the Company has not already done so by the date of issuance of this Order, the Company shall file its long distance tariff and accompanying price list within thirty (30) days of receipt of this Order. The tariffs shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations.

5. The Company is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers should be treated similarly to facilities-based interexchange carriers.

6. With regard to the Company's interexchange service, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

7. The Company shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If the Company changes underlying carriers, it shall notify the Commission in writing.

8. With regard to the origination and termination of toll calls within the same LATA, the Company shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX intraLATA dialing requirement, which has been rendered obsolete by the toll dialing parity rules established by the Federal Communications Commission ("FCC"), pursuant to the Telecommunications Act of 1996 (See, 47 CFR 51.209). Specifically, the Company shall comply with the imputation standard as adopted by Order No. 93-462 and more fully described in paragraph 4 of the Stipulation and Appendix B approved by Order No. 93-462.

9. Title 23, Chapter 47, South Carolina Code of Laws Ann., governs the establishment and implementation of a “Public Safety Communications Center,” which is more commonly known as a “911 system” or “911 service.” Services available through a 911 system include law enforcement, fire, and emergency medical services. In recognition of the necessity of quality 911 services being provided to the citizens of South Carolina, the Commission hereby instructs the Company to contact the appropriate authorities regarding 911 service in the counties and cities where the Company will be operating. Contact with the appropriate authorities is to be made before providing voice or dial tone telephone service in South Carolina. Accompanying this Order is a memo from the State 911 Office at the Office of Research & Statistics of the South Carolina Budget and Control Board. This memo provides information about contacting County 911 Coordinators. By this Order and prior to providing voice or dial-tone services within South Carolina, the Company shall contact the 911 Coordinator in each county, as well as the 911 Coordinator in each city where the city has its own 911 system, and shall provide information regarding the Company’s operations as required by the 911 system.

10. The Company shall file annual financial information in the form of annual reports and gross receipts reports as required by the Commission. The annual report and the gross receipts reports will necessitate the filing of intrastate information. Therefore, The Company shall keep financial records on an intrastate basis for South Carolina in order to comply with the Commission’s requirements of filing an annual report and a gross receipts report. The proper form for filing annual financial information for the annual report may be found on the Commission’s website at

[www.psc.state.sc.us/reference/forms.asp](http://www.psc.state.sc.us/reference/forms.asp). The title of this form is “Annual Report for CLECs” and/or “Annual Report for Interexchange Companies.” The Company shall file the annual report form with the Commission by April 1<sup>st</sup> of each year.

Commission gross receipts forms are due to be filed with the Commission no later than August 31<sup>st</sup> of each year. The appropriate form for remitting information for gross receipts is entitled “Gross Receipts Form for Utility Companies” and may also be found on the Commission’s website at [www.psc.state.sc.us/reference/forms.asp](http://www.psc.state.sc.us/reference/forms.asp).

Additionally, pursuant to the Commission’s regulations, the Company shall file a “CLEC Service Quality Quarterly Report” with the Commission. The proper form for this report can be found at the Commission’s website at [www.psc.state.sc.us/reference/forms.asp](http://www.psc.state.sc.us/reference/forms.asp).

11. In addition, the Company is required to file annual report information for competitive local exchange carriers. The form the Company shall use to file its annual financial information with the Commission can be found on the Commission's website at <http://www.psc.state.sc.us/reference/forms.asp>. This form is entitled "Annual Report for Competitive Local Exchange Carriers" and consists of four pages. Additionally, the Company shall file with the Commission a quarterly report entitled “CLEC Service Quality Quarterly Report.” The proper form for this report is found on the Commission’s website at <http://www.psc.state.sc.us/reference/forms.asp>.

12. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests

and repairs. In addition, the Company shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies occurring during non-office hours.

The Company shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The form the Company shall use to file this authorized utility representative information can be found at the Commission's website at <http://www.psc.state.sc.us/reference/forms.asp>. This form is entitled "Authorized Utility Representative Information." Further, the Company shall promptly notify the Commission in writing if the representatives are replaced. The Company shall also file with the Commission a copy of their general Bill Form as required by S.C. Code Regs. 103-612.2 and 103-622 (1976 and Supp. 2003).

13. The Company shall conduct its businesses in compliance with Commission decisions and Orders, both past and future, including but not limited to, any and all Commission decisions which may be rendered in Docket No. 96-018-C regarding local competition.

14. The FCC in July of 2000 required all telecommunications carriers throughout the United States to implement three-digit, 711, dialing for access to all Telecommunications Relay Services (TRS). The Commission issued a memorandum in March of 2001 instructing all South Carolina telecommunications carriers to implement the service completely by October of 2001. All competitive local exchange carriers (CLECs) and incumbent local exchange carriers (ILECs) were instructed to include language in their tariffs introducing 711 as a new service offering with deployment by

July 1, 2001, and to translate 711 dialed calls to 1-800-735-2905. All Payphone Service Providers (PSPs) were instructed to modify their programmable phones to translate calls dialed as 711 to the assigned TRS toll free number 1-800-735-2905 in order to route 711 calls to the TRS provider before October 2, 2001. Additionally, telephone directories were required to be updated and bill inserts promoting 711 were also required. This Company must comply with the applicable mandates. For complete information on compliance with this FCC and Commission requirement, go to the Commission's website at <http://www.psc.state.sc.us/reference/forms.asp>

15. By its Application, the Company requested a waiver of 26 S.C. Code Ann. Regs. 103-631 (1976 and Supp. 2003). In lieu of publishing local directories, the Company informs the Commission that it will contract with the incumbent LECs to provide the Company's customers with directory listings, as well as to undertake the distribution of directories. The Commission finds the Company's requests reasonable and grants the requested waiver of the application of 26 S.C. Code Ann. Regs. 103-631 (1976 and Supp. 2003). Further, the Company is granted a waiver of 26 S.C. Regs. 103-610 (1976 and Supp. 2003) requiring the Company to maintain its financial books and records within the State of South Carolina. The Company is hereby granted permission to maintain its financial books and records at its principal headquarters in Shrewsbury, New Jersey, provided that the Company make its books and records available to the Commission and the Commission Staff when requested. Further, the Company is granted a waiver of the requirement that books and records be maintained in accordance with the Uniform Systems of Accounts ("USOA"). The Company is directed to comply with all

Rules and Regulations of the Commission, unless the Commission specifically waives compliance with a regulation.

16. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

/s/  
Randy Mitchell, Chairman

ATTEST:

/s/  
G. O'Neal Hamilton, Vice-Chairman

(SEAL)